(3)

No. 10-92

FILED
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In The
Supreme Court of the United States

CHRISTINE SAHYERS,

Petitioner,

v.

PRUGH, HOLLIDAY, & KARATINOS, P.L.,
A Florida Limited Liability Corporation,
TIMOTHY PRUGH, JAMES W. HOLLIDAY, II,
THEODORE E. KARATINOS,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

REPLY BRIEF

RYAN DAVID BARACK
KWALL, SHOWERS & BARACK, P.A.
133 N. Fort Harrison Avenue
Clearwater, FL 33755

BENJAMIN H. BARTON
Counsel of Record
UNIVERSITY OF TENNESSEE LAW SCHOOL
1505 W. Cumberland Avenue
Knoxville, TN 37996
(865) 974-2331
bbarton@utk.edu

Counsel for Petitioner

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COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

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I. Respondents' Brief Fails to Address the Key Issues in this Case

Respondents' brief fails to address the critical issue in this case: the Eleventh Circuit held that a federal court's inherent powers allow it to disregard a federal statute in an effort "to guard and to promote civility and collegiality among the members of its bar" unless the statute abrogates those powers with "very clear words." (Pet. App. 6-7). This holding dangerously expands both the scope and nature of federal court inherent power and ignores repeated precedent from this Court that "[e]ven a sensible and efficient use of the supervisory power . . . is invalid if it conflicts with constitutional or statutory provisions." *Thomas v. Arn*, 474 U.S. 140, 148 (1985); *see also Bank of Nova Scotia v. United States*, 487 U.S. 250, 254 (1988).

Respondents' brief does not dispute large portions of Petitioner's argument. Respondent does not dispute that Petitioner was the prevailing party under Eleventh Circuit Fair Labor Standards Act ("FLSA") law or that FLSA's fee provision is mandatory. Respondents' brief does not defend the Eleventh Circuit's holding that a federal court can use its inherent authority to disregard a facially applicable federal statute unless that statute abrogates inherent authority with "very clear words." (Pet. App. 7 n.6).

Respondent also fails to address the Circuit split over this issue. (Pet. 22-25). Respondent barely mentions the many warnings from this Court that the extent of inherent powers "must be delimited with

care" because of the danger of "over-reaching when one branch of the Government, without benefit of cooperation or correction from the others, undertakes to define its own authority." *Degen v. United States*, 517 U.S. 820, 823 (1996). (Pet. 15-22). In short, Respondents seek to avoid the issues that are at the heart of this case and the very issues that make this a case of national importance.

II. The Eleventh Circuit's Decision is Based Solely on Inherent Authority and Cannot be Squared with the Plain Language of the FLSA

Respondents' first argument cobbles together some details from the litigation in this case with two sentences of the District Court's order to argue that this is a "nuisance settlement" case. (Resp. 8-10). This is clearly not the basis of the Eleventh Circuit panel or en banc opinions. To the contrary, those opinions explicitly recognize that the district court disregarded the plain statutory command of the FLSA's mandatory fee provision. The Eleventh Circuit holds that the district court "in substance, based [its decision] on its inherent powers to supervise the conduct of the lawyers who come before it and to keep in proper condition the legal community of which the courts are a leading part," not FLSA's procedures for setting fees. (Pet. App. 5). This is because the district court's FLSA analysis ignored Eleventh Circuit and Supreme Court precedent on the calculation of, and right to, attorney's fees for prevailing parties. (Pet. 15-16).

Further, the district court denied fees because Respondents are a law firm and "[p]rior to filing suit in this local area, it is still reasonable to pick up the phone and call another lawyer so it won't be necessary to file suit," with little focus on the nature or size of the settlement. (Pet. App. 14).[1] The district court did not treat this as a nuisance settlement case (and with $3500 in wage-based damages it could not have), but rather a lawyer collegiality case.

III. This is Not a Sanctions Case

Alternatively, Respondents argue that this case does not involve an overstatement of inherent authority because federal courts have the power to sanction the attorneys that practice before them. (Resp. 11-12). Respondents ignore a key reason why this case is not, and cannot be, a sanctions case.

It is black letter law that before a court may exercise its inherent authority to sanction a lawyer it must offer both notice and a chance to be heard. Since at least 1871 this Court has held that "except where

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[1] Moreover, under Eleventh Circuit law a private, out-of-court settlement would not have been enforceable without court or Department of Labor approval, so the parties could not have avoided court proceedings in this matter regardless of pre-suit notice. *See Dees v. Hydradry, Inc.*, 706 F. Supp. 2d 1227, 1227-30 (M.D. Fla. 2010); *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350 (11th Cir. 1982); *Moreno v. Regions Bank*, No. 8:09-CV-930-T-23TGW, 2010 WL 3118278, at *2-4 (M.D. Fla. Aug. 6, 2010).

matters occurring in open court, in presence of the judges, constitute the grounds of its action, the power of the court should never be exercised without notice to the offending party of the grounds of complaint against him, and affording him ample opportunity of explanation and defence." *Bradley v. Fisher*, 80 U.S. 335, 354 (1871); *see also* FED. R. CIV. P. 83(b); *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 767 (1980) ("Like other sanctions, attorney's fees certainly should not be assessed lightly or without fair notice and an opportunity for a hearing on the record."); *Adkins v. Christie*, 227 Fed. Appx. 804, 806 (11th Cir. 2007) (A court "must afford the sanctioned party due process, [which] mandates that an attorney be given fair notice that his conduct may warrant sanctions and the reasons why [and] the attorney must be given a chance to respond to the allegations and justify his or her actions."); Daniel H. Fehderau, *Rule 11 and the Court's Inherent Power to Shift Attorney's Fees: An Analysis of Their Competing Objectives and Applications*, 33 SANTA CLARA L. REV. 701, 708-9 (1993).

Not only was there no notice or opportunity to be heard in this case, the district court itself never termed the FLSA fees determination a sanction. (Pet. App. 11-16). Thus, this case was never treated as a sanctions case below and to do so after the fact would be doubly illegitimate.

IV. This Case Creates a Lawyers-Only Exception to the FLSA

Respondents last argue that the "outcome [in this case] would have been the same even if Respondents were not a law firm and its attorneys." (Resp. 8). This statement flies in the face of the opinions of both the district court and Eleventh Circuit. The entire basis of those opinions is that Respondents are a law firm and professional courtesy required a pre-suit call to settle the case. The Eleventh Circuit's appeal to civility and collegiality would be nonsensical outside of a lawsuit against a law firm. The Eleventh Circuit opinion contains the exceptional caveat that in reaching their decision "We put aside cases in which lawyers are not parties." (Pet. App. 9).

CONCLUSION

As we explain in the Petition, this is a case of national import that raises critical questions about the nature and scope of the inherent authority of federal courts.[2] If the Eleventh Circuit's opinion

[2] As evidence of national impact, the Petitioner lists ten federal court cases citing to *Sahyers*. (Pet. 31-32 n.3). Since the Petition, two more federal courts and a state supreme court have cited the case: *Machado v. Da Vittorio, LLC*, No. 09 23069 CIV, 2010 WL 2949618, at *2 (S.D. Fla. July 26, 2010) (citing *Sahyers* for the proposition that FLSA plaintiffs are entitled to only those awards of attorney's fees that are reasonable); *Goodale v. George S. May Int'l Co.*, No. 09 C 7848, 2010 WL 2774013, at *2 (N.D. Ill. July 14, 2010) (FLSA defendants cite *Sahyers* in support of

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stands, federal courts will have the power to disregard most any statute when it conflicts with a court's vision of its own inherent authority. The Eleventh Circuit's requirement that Congress must "specifically, explicitly and directly" abrogate inherent authority with "very clear words" is in conflict with at least five other Circuit courts and multiple precedents of this Court. The otherwise unreviewable nature of inherent powers necessitates review in this case.

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

RYAN DAVID BARACK
KWALL, SHOWERS & BARACK, P.A.
133 N. Fort Harrison Avenue
Clearwater, FL 33755

BENJAMIN H. BARTON
Counsel of Record
UNIVERSITY OF TENNESSEE
LAW SCHOOL
1505 W. Cumberland Avenue
Knoxville, TN 37996
(865) 974-2331
bbarton@utk.edu

Counsel for Petitioner

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no award of fees); *Peterson v. St. Paul Fire and Marine Ins. Co.*, No. DA 09-0500, 2010 WL 3326706, at *12 (Mont. Aug. 24, 2010) (discussing offers of judgment).